

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ELISHEVA ANANYAH FEINBERG-
TOMAHAWK,

Plaintiff,

v.

CITY AND COUNTY OF SAN
FRANCISCO, et al.,

Defendants.

Case No. [14-cv-02275-JD](#)

**ORDER GRANTING EX PARTE
TEMPORARY RESTRAINING ORDER**

Re: Dkt. No. 1

Plaintiff has filed a complaint and an ex parte application for a temporary restraining order (“TRO”)¹ against Defendants City and County of San Francisco, San Francisco Department of Animal Care and Control (“SFDACC”), and two individual employees of SFDACC. Dkt. No. 1.

Plaintiff alleges that Defendants violated her First, Fourth, Fifth and Fourteenth Amendment rights when they refused to release her dog, NightShade, from the custody of SFDACC unless Plaintiff agreed to allow NightShade to be neutered. *Id.* at 1-2. SFDACC said that NightShade had to be neutered because he is a Staffordshire Terrier or Pit Bull, a member of a “dangerous breed.” *Id.* at 2. Plaintiff made a written request to SFDACC for a review and fair evaluation of NightShade’s breed and breeding permits. *Id.* at 8. SFDACC rejected her applications. *Id.* Plaintiff contends that NightShade is currently being held by SFDACC and is scheduled to be neutered on May 16, 2014. *Id.* at 4.

Under Federal Rule of Civil Procedure 65(b), a court may issue an ex parte TRO if: (1) it clearly appears that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party’s attorney can be heard in opposition; and (2) the applicant’s

¹ Because Plaintiff is proceeding *pro se*, her filings are to “liberally construed.” *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007).

1 attorney certifies to the court in writing the efforts, if any, which have been made to give notice
2 and the reasons supporting the claim that notice should not be required. Fed. R. Civ. Pro. 65(b);
3 *Reno Air Racing Ass'n v. McCord*, 452 F.3d 1126, 1130 (9th Cir. 2006). Notice may be excused
4 when "a known party cannot be located in time for a hearing." *McCord*, 452 F.3d at 1131.
5 Temporary restraining orders granted ex parte are to be "restricted to serving their underlying
6 purpose of preserving the status quo and preventing irreparable harm just so long as is necessary
7 to hold a hearing, and no longer." *Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415
8 U.S. 423, 438-39, 94 S.Ct. 1113, 39 L.Ed.2d 435 (1974); *McCord*, 452 F.3d at 1131.

9 The Court finds Plaintiff has shown that, absent a temporary restraining order, immediate
10 and irreparable injury, loss, or damage will result before Defendants can be heard in opposition.
11 Accordingly, Defendants are enjoined from neutering or disposing of NightShade for 10 days,
12 until May 26, 2014, at 5:00 p.m.

13 Plaintiff will serve all Defendants with the Complaint, associated filings, and this Order by
14 no later than May 19, 2014 and will file a proof of service of same with the Court by no later than
15 May 20, 2014. Once service has properly been effectuated, the Court will set a hearing for the
16 matter. Defendants may apply to the Court for modification or dissolution of the instant Order
17 upon two days' notice to Plaintiff.

18 **IT IS SO ORDERED.**

19 Dated: May 16, 2014

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23 JAMES DONATO
24 United States District Judge
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